

Letter of Findings Number: 04-20110241**Sales Tax****For the Years 2007-2009**

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ISSUE**I. Sales Tax—Exemptions.**

Authority: IC § 6-2.5-1-2; IC § 6-2.5-2-1; IC § 6-2.5-4-1; IC § 6-2.5-8-8; IC § 6-2.5-9-3; IC § 6-8.1-5-1; Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer protests the Department's assessment of sales tax on items sold to one of its customers.

STATEMENT OF FACTS

Taxpayer is a corporation. Taxpayer sells printed, embossed, engraved, embroidered, and otherwise personalized uniforms, invitations, towels, cups, badges, electronic accessories, and tote bags. Taxpayer made sales to Indiana customers and delivered the items to its Indiana customers. The Indiana Department of Revenue ("Department") audited Taxpayer and determined that it had made Indiana sales transactions without charging Indiana sales tax and without receiving exemption certificates. As a result, the Department assessed sales tax on these transactions. Taxpayer protested the assessment of sales tax on items sold to one of its customers. The Department conducted an administrative hearing, and this Letter of Findings results. Additional facts will be supplied as necessary.

I. Sales Tax—Exemptions.**DISCUSSION**

The Department notes that all tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Pursuant to IC § 6-2.5-2-1, a sales tax, known as state gross retail tax, is imposed on retail transactions made in Indiana unless a valid exemption is applicable. IC § 6-2.5-1-2 defines a retail transaction as "a transaction of a retail merchant that constitutes selling at retail as described in IC § 6-2.5-4-1... or that is described in any other section of IC § 6-2.5-4." IC § 6-2.5-4-1(a) provides that "[a] person is a retail merchant making a retail transaction when he engages in selling at retail." IC § 6-2.5-4-1(b) further explains that a person sells at retail when he "(1) acquires tangible personal property for the purpose of resale; and (2) transfers that property to another person for consideration."

IC § 6-2.5-9-3(2) sets out the responsibilities of a retail merchant:

An individual who: (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and (2) has a duty to remit state gross retail or use taxes (as described in [IC 6-2.5-3-2](#)) to the department; holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

The Department found that Taxpayer, as a retail merchant, had made sales to Indiana customer(s) without collecting sales tax or obtaining the necessary exemption certificates, and assessed sales tax on the sales transactions.

Taxpayer maintains that sales tax should not be assessed on items sold to one of its customers. At the time of the audit, Taxpayer was unable to produce an exemption certificate from the customer in question. After the audit was completed, Taxpayer provided the relevant exemption certificate. As a result of providing a properly completed exemption certificate in the form and manner prescribed by the Department, Taxpayer was not required to collect sales tax at the time of the sale pursuant to IC § 6-2.5-8-8(a). Thus, Taxpayer's protest of sales tax on the items sold to this particular customer is sustained.

FINDING

Taxpayer's protest is sustained.

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